

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 216**

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**Introduced by Assembly Member Bass**  
(Coauthor: Senator Steinberg)

January 25, 2007

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An act to amend ~~Section~~ *Sections 56366.1 and 56366.10* of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 216, as amended, Bass. Special education: nonpublic, nonsectarian schools *and agencies*.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing state law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. *Under certain circumstances, a school district, county office of education, or special education local plan area is authorized to enter into a contract for the provision of special education and related services with a nonpublic, nonsectarian school or agency that has been certified by the Superintendent of Public Instruction.*

*Existing law requires the Superintendent to annually review the certification of each nonpublic, nonsectarian school and agency, and,*

*for this purpose, requires a certified school or agency to annually update its application between August 1 and October 31, unless the State Board of Education grants a waiver.*

*This bill would extend the timeframe in which to annually update the application, to between July 1 and October 31.*

Under existing law, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs is required to certify in writing to the Superintendent of ~~Public Instruction~~ that it meets specified requirements, including, among others, that pupils have access to the specified educational materials, services, and programs to the extent available at the local educational agency in which the nonpublic school is located.

This bill, instead, would require that the educational materials, services, and programs provided by the nonpublic, nonsectarian school be adopted by the State Board of Education, and be consistent with the pupil's individualized education program.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 56366.1 of the Education Code is amended  
2     to read:

3     56366.1. (a) A nonpublic, nonsectarian school or agency that  
4     seeks certification shall file an application with the Superintendent  
5     on forms provided by the department and include the following  
6     information on the application:

7     (1) A description of the special education and designated  
8     instruction and services provided to individuals with exceptional  
9     needs if the application is for nonpublic, nonsectarian school  
10    certification.

11    (2) A description of the designated instruction and services  
12    provided to individuals with exceptional needs if the application  
13    is for nonpublic, nonsectarian agency certification.

14    (3) A list of appropriately qualified staff, a description of the  
15    credential, license, or registration that qualifies each staff member  
16    rendering special education or designated instruction and services  
17    to do so, and copies of their credentials, licenses, or certificates of  
18    registration with the appropriate state or national organization that  
19    has established standards for the service rendered.

1 (4) An annual operating budget.

2 (5) Affidavits and assurances necessary to comply with all  
3 applicable federal, state, and local laws and regulations ~~which~~ *that*  
4 include criminal record summaries required of all nonpublic school  
5 or agency personnel having contact with minor children under  
6 Section 44237.

7 (b) (1) The applicant shall provide the special education local  
8 plan area in which the applicant is located with the written  
9 notification of its intent to seek certification or renewal of its  
10 certification. The applicant shall submit on a form, developed by  
11 the department, a signed verification by local educational agency  
12 representatives that they have been notified of the intent to certify  
13 or renew certification. The verification shall include a statement  
14 that representatives of the local educational agency for the area in  
15 which the applicant is located have had the opportunity to review  
16 the application at least 60 calendar days prior to submission of an  
17 initial application to the Superintendent, or at least 30 calendar  
18 days prior to submission of a renewal application to the  
19 Superintendent. The signed verification shall provide assurances  
20 that local educational agency representatives have had the  
21 opportunity to provide input on all required components of the  
22 application.

23 (2) If the applicant has not received a response from the local  
24 educational agency 60 calendar days from the date of the return  
25 receipt for initial applications or 30 calendar days from the date  
26 of the return receipt for renewal applications, the applicant may  
27 file the application with the Superintendent. A copy of the return  
28 receipt shall be included with the application as verification of  
29 notification efforts to the local educational agency.

30 (3) The department shall mail renewal application materials to  
31 certified nonpublic, nonsectarian schools and agencies at least 120  
32 days prior to the date their current certification expires.

33 (c) If the applicant operates a facility or program on more than  
34 one site, each site shall be certified.

35 (d) If the applicant is part of a larger program or facility on the  
36 same site, the Superintendent shall consider the effect of the total  
37 program on the applicant. A copy of the policies and standards for  
38 the nonpublic, nonsectarian school or agency and the larger  
39 program shall be available to the Superintendent.

(e) Prior to certification, the Superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The Superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The Superintendent shall conduct an additional onsite review of the facility and program within three years of the effective date of the certification, unless the Superintendent conditionally certifies the school or agency or unless the Superintendent receives a formal complaint against the school or agency. In the latter two cases, the Superintendent shall conduct an onsite review at least annually.

(f) The Superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the Superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the Superintendent shall provide reasons for the denial. The Superintendent may certify the school or agency for a period of not longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the Superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The Superintendent *annually* shall ~~annually~~ review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency *annually* shall ~~annually~~ update its application between ~~August~~ July 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The Superintendent may conduct an onsite review as part of the annual review.

(i) (1) The Superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The Superintendent shall document the concern and submit it to the

1 nonpublic, nonsectarian school or agency at the time of the onsite  
2 investigation. The Superintendent shall require a written response  
3 to any noncompliance or deficiency found.

4 (2) With respect to a nonpublic, nonsectarian school, the  
5 Superintendent shall conduct an investigation, which may include  
6 an unannounced onsite visit, if the Superintendent receives  
7 evidence of a significant deficiency in the quality of educational  
8 services provided, a violation of Section 56366.9, or  
9 noncompliance with the policies expressed by subdivision (b) of  
10 Section 1501 of the Health and Safety Code by the nonpublic,  
11 nonsectarian school. The Superintendent shall document the  
12 complaint and the results of the investigation and shall provide  
13 copies of the documentation to the complainant, the nonpublic,  
14 nonsectarian school, and the contracting local educational agency.

15 (3) Violations or noncompliance documented pursuant to  
16 paragraph (1) or (2) shall be reflected in the status of the  
17 certification of the school, at the discretion of the Superintendent,  
18 pending an approved plan of correction by the nonpublic,  
19 nonsectarian school. The department shall retain for a period of  
20 10 years, all violations pertaining to certification of the nonpublic,  
21 nonsectarian school or agency.

22 (j) The Superintendent shall monitor the facilities, the  
23 educational environment, and the quality of the educational  
24 program, including the teaching staff, the credentials authorizing  
25 service, the standards-based core curriculum being employed, and  
26 the standard focused instructional materials used, of an existing  
27 certified nonpublic, nonsectarian school or agency on a three-year  
28 cycle, as follows:

29 (1) The nonpublic, nonsectarian school or agency shall complete  
30 a self-review in year one.

31 (2) The Superintendent shall conduct an onsite review of the  
32 nonpublic, nonsectarian school or agency in year two.

33 (3) The Superintendent shall conduct a followup visit to the  
34 nonpublic, nonsectarian school or agency in year three.

35 (k) (1) Notwithstanding any other provision of law, the  
36 Superintendent may not certify a nonpublic, nonsectarian school  
37 or agency that proposes to initiate or expand services to pupils  
38 currently educated in the immediate prior fiscal year in a juvenile  
39 court program, community school pursuant to Section 56150, or  
40 other nonspecial education program, including independent study

1 or adult school, or both, unless the nonpublic, nonsectarian school  
2 or agency notifies the county superintendent of schools and the  
3 special education local plan area in which the proposed new or  
4 expanded nonpublic, nonsectarian school or agency is located of  
5 its intent to seek certification.

6 (2) The notification shall occur no later than the December 1  
7 prior to the new fiscal year in which the proposed or expanding  
8 school or agency intends to initiate services. The notice shall  
9 include the following:

10 (A) The specific date upon which the proposed nonpublic,  
11 nonsectarian school or agency is to be established.

12 (B) The location of the proposed program or facility.

13 (C) The number of pupils proposed for services, the number of  
14 pupils currently served in the juvenile court, community school,  
15 or other nonspecial education program, the current school services  
16 including special education and related services provided for these  
17 pupils, and the specific program of special education and related  
18 services to be provided under the proposed program.

19 (D) The reason for the proposed change in services.

20 (E) The number of staff that will provide special education and  
21 designated instruction and services and hold a current valid  
22 California credential or license in the service rendered or certificate  
23 of registration to provide occupational therapy.

24 (3) In addition to the requirements in subdivisions (a) to (f),  
25 inclusive, the Superintendent shall require and consider the  
26 following in determining whether to certify a nonpublic,  
27 nonsectarian school or agency as described in this subdivision:

28 (A) A complete statement of the information required as part  
29 of the notice under paragraph (1).

30 (B) Documentation of the steps taken in preparation for the  
31 conversion to a nonpublic, nonsectarian school or agency, including  
32 information related to changes in the population to be served and  
33 the services to be provided pursuant to each pupil's individualized  
34 education program.

35 (4) Notwithstanding any other provision of law, the certification  
36 becomes effective no earlier than July 1 if the school or agency  
37 provided the notification required pursuant to paragraph (1).

38 (l) (1) Commencing July 1, 2006, notwithstanding any other  
39 provision of law, the Superintendent ~~may~~ *shall* not certify or renew

1 the certification of a nonpublic, nonsectarian school or agency,  
2 unless all of the following conditions are met:

3 (A) The entity operating the nonpublic, nonsectarian school or  
4 agency maintains separate financial records for each entity that it  
5 operates, with each nonpublic, nonsectarian school or agency  
6 identified separately from any licensed children's institution that  
7 it operates.

8 (B) The entity submits an annual budget that identifies the  
9 projected costs and revenues for each entity and demonstrates that  
10 the rates to be charged are reasonable to support the operation of  
11 the entity.

12 (C) The entity submits an entity-wide annual audit that identifies  
13 its costs and revenues, by entity, in accordance with generally  
14 accepted accounting and auditing principles. The audit *clearly*  
15 shall ~~clearly~~ document the amount of moneys received and  
16 expended on the education program provided by the nonpublic,  
17 nonsectarian school.

18 (D) The relationship between various entities operated by the  
19 same entity are documented, defining the responsibilities of the  
20 entities. The documentation *clearly* shall ~~clearly~~ identify the  
21 services to be provided as part of each program, for example, the  
22 residential or medical program, the mental health program, or the  
23 educational program. The entity shall not seek funding from a  
24 public agency for a service, either separately or as part of a package  
25 of services, if the service is funded by another public agency, either  
26 separately or as part of a package of services.

27 (2) For purposes of this section, ~~the term~~ "licensed children's  
28 institution" has the same meaning as it is defined by Section  
29 56155.5.

30 (m) The school or agency shall be charged a reasonable fee for  
31 certification. The Superintendent may adjust the fee annually  
32 commensurate with the statewide average percentage inflation  
33 adjustment computed for revenue limits of unified school districts  
34 with greater than 1,500 units of average daily attendance if the  
35 percentage increase is reflected in the district revenue limit for  
36 inflation purposes. For purposes of this section, the base fee shall  
37 be the following:

38		
39	(1) 1- 5 pupils.....	\$ 300
40	(2) 6-10 pupils.....	500

1	(3) 11-24 pupils.....	1,000
2	(4) 25-75 pupils.....	1,500
3	(5) 76 pupils and over.....	2,000

4  
5 The school or agency shall pay this fee when it applies for  
6 certification and when it updates its application for annual review  
7 by the Superintendent. The Superintendent shall use these fees to  
8 conduct onsite reviews, which may include field experts. No fee  
9 shall be refunded if the application is withdrawn or is denied by  
10 the Superintendent.

11 (n) (1) Notwithstanding any other provision of law, only those  
12 nonpublic, nonsectarian schools and agencies that provide special  
13 education and designated instruction and services utilizing staff  
14 who hold a certificate, permit, or other document equivalent to  
15 that which staff in a public school are required to hold in the service  
16 rendered are eligible to receive certification. Only those nonpublic,  
17 nonsectarian schools or agencies located outside of California that  
18 employ staff who hold a current valid credential or license to render  
19 special education and related services as required by that state shall  
20 be eligible to be certified.

21 (2) The board shall develop regulations to implement this  
22 subdivision.

23 (o) In addition to meeting the standards adopted by the board,  
24 a nonpublic, nonsectarian school or agency shall provide written  
25 assurances that it meets all applicable standards relating to fire,  
26 health, sanitation, and building safety.

#### 27 **SECTION 1.**

28 *SEC. 2.* Section 56366.10 of the Education Code is amended  
29 to read:

30 56366.10. In addition to the certification requirements set forth  
31 in Sections 56366 and 56366.1, a nonpublic, nonsectarian school  
32 that provides special education and related services to an individual  
33 with exceptional needs shall certify in writing to the Superintendent  
34 that it meets all of the following requirements:

35 (a) It will not accept a pupil with exceptional needs if it cannot  
36 provide or ensure the provision of the services outlined in the  
37 pupil's individualized education program.

38 (b) Pupils have access to the following educational materials,  
39 services, and programs adopted by the ~~Board~~ *board* that are  
40 consistent with each pupil's individualized education program:



1 (1) State adopted, standards-based, core curriculum and  
2 instructional materials.

3 (2) College preparation courses.

4 (3) Extracurricular activities, such as art, sports, music, and  
5 academic clubs.

6 (4) Career preparation and vocational training, consistent with  
7 transition plans pursuant to state and federal law.

8 (5) Supplemental assistance, including individual academic  
9 tutoring, psychological counseling, and career and college  
10 counseling.

11 (c) The teachers and staff provide academic instruction and  
12 support services to pupils with the goal of integrating pupils into  
13 the least restrictive environment pursuant to federal law.

14 (d) The school has and abides by a written policy for pupil  
15 discipline which is consistent with state and federal law and  
16 regulations.